

Commissioner Authority to Require Permits for the Use of Pesticides That Are Not Restricted Materials

Date	April 24, 2002
Attachment to	ENF 02-16
Distribution	County Agricultural Commissioners
Referral	If you have any questions pertaining to this document, please contact your Senior Pesticide Use Specialist Liaison.
Background	<p>This document supercedes enforcement letter ENF 01-58.</p> <p>County agricultural commissioners (CACs) occasionally find that adverse impacts are occurring from the use of a particular pesticide that the Department of Pesticide Regulation (DPR) has not designated as a restricted material. Due to the increase of urban communities sharing common boundaries with agricultural operations, this local problem appears to be occurring more frequently.</p>
FAC section 14006.6(a)	Food and Agricultural Code (FAC) section 14006.6(a) states, "A permit shall not be required for the agricultural use of any pesticide not designated as a restricted material UNLESS THE COMMISSIONER DETERMINES THAT ITS USE WILL PRESENT AN UNDUE HAZARD WHEN USED UNDER LOCAL CONDITIONS. "
CAC authority	CACs are authorized to require permits for agricultural use of pesticides not designated restricted materials and condition such permits PROVIDED they first make a determination that, when used under local conditions, the use of the pesticide(s) would present an undue hazard. Permits by the CAC are subject to certain exceptions such as those specified in FAC section 14006.7.

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Determination of undue hazard

The CAC's determination of undue hazard must describe the excessive or unwarranted hazard that results from a pesticide(s) when used in that specific situation. The determination may apply to the entire county, a particular portion of the county, during particular times, or even within the vicinity of particular sensitive area(s). DPR will provide on, a case-by-case basis, any pertinent information available that may assist the CAC in making a determination. Mitigation measures or permit conditions should be issued with the permit, not designated in the actual determination.

Permit and conditions by the CAC

Upon a determination, the CAC may require a permit prior to any use of a particular pesticide(s) in designated areas within the county. Pesticide(s) subject to a county permit may be treated the same as restricted materials within the county of issuance. However, although the CAC may require a permit, their requirement does not make a general-use pesticide a "restricted material" as defined in Title 3 of the California Code of regulations (3CCR) section 6400. This is an important distinction because the county permit must clearly specify all use requirements including those required by all restricted materials. For example, a restricted material requires a notice of intent to apply (NOI) and use by, or under, the direct supervision of a certified applicator. If the CAC determines a NOI or certified applicator is necessary to mitigate the undue hazard, he or she must specify the requirements in the permit or conditions. The CAC may include a general condition that requires compliance with all laws and regulations applicable to "restricted materials."

Permit review

FAC section 14009 establishes the process for interested persons to request a permit review. Although, the law does not specifically address permits for agricultural use of pesticides not designated restricted materials, the Director will accept review appeals for permits issued by the CAC. Whenever a CAC conducts a permit review and issues a written decision, a directly affected person may appeal to the Director. DPR's restricted materials permit review and appeal process is outlined in Executive Office Letter #97-5.

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Notice to other parties	CACs who make a determination that a permit is required for a pesticide(s) not designated a restricted material should also inform pest control dealers of the requirement.
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Summary	This document focuses on CAC authority to require permits for agricultural use of pesticides not designated restricted materials pursuant to FAC section 14006.6(a). DPR has previously provided information on requiring permits for federally restricted use pesticides pursuant to 3CCR section 6414 (refer to ENF 01-19) and plans to issue guidance to assist CACs when adopting regulations by the commissioner pursuant to FAC section 11503, in 2002.
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Other related letters	EXE OFF #97-5: Restricted Materials Permit Review and Appeal Process ENF 01-58: Commissioner Authority to Require Permits for the Use of Pesticides That Are Not Restricted Materials ENF 01-30: Permits for Agricultural Use of Pesticides That Are Not Restricted Material
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